

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STANLEY MCCRAY,

Defendant-Appellant.

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UNPUBLISHED

April 9, 2002

No. 229132

Wayne Circuit Court

LC No. 99-010212

Before: Neff, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendant Stanley McCray, his cousin Stacey McCray, and Anthony L. Johnson were jointly charged with first-degree murder, MCL 750.316 (during the commission of a larceny and with premeditation and deliberation), and with possession of a firearm during the commission of a felony, MCL 750.227b, arising out of the fatal shooting of Eien Johnson. Following a joint bench trial, Stacey was acquitted of all charges and Johnson was convicted of second-degree murder, MCL 750.317, armed robbery, MCL 750.529, and felony-firearm. Defendant was convicted of assault with intent to murder, MCL 750.83, armed robbery, and felony-firearm. He was sentenced to concurrent prison terms of fifteen to thirty years for the assault and armed robbery convictions and also sentenced to a consecutive two years for felony-firearm. Defendant appeals as of right. We affirm.

Defendant first claims that the prosecutor presented insufficient evidence of a felonious taking of property to support his conviction for armed robbery. We disagree. Due process requires that a prosecutor introduce evidence sufficient to justify the trier of fact in concluding that the defendant is guilty beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). Thus, a claim that evidence does not meet this standard raises an issue of law that this Court reviews de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). This Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found all of the elements of the offense proven beyond a reasonable doubt. *Jackson v Virginia*, 443 US 307, 319; 99 S Ct 2781; 61 L Ed 2d 560 (1979); *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), mod 441 Mich 1201 (1992). Sufficient evidence to find all the elements of an offense beyond a reasonable doubt may be derived from circumstantial evidence and reasonable inferences from the evidence. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). This Court will not interfere with the

factfinder's role in determining the weight of evidence or the credibility of witnesses, whether the factfinder is a jury, *Wolfe, supra*, or the trial court, *People v Jackson*, 178 Mich App 62, 64-65; 443 NW2d 423 (1989). *People v Petrella*, 424 Mich 221, 269-270; 380 NW2d 11 (1985).

The elements of armed robbery are: (1) an assault and (2) a felonious taking of property from the victim's person or presence (3) while the defendant is armed with a dangerous weapon. *People v Lee*, 243 Mich App 163, 168; 622 NW2d 71 (2000); MCL 750.529. When viewed in the light most favorable to the prosecution, the record contains sufficient evidence to sustain a finding of felonious taking of property from the victim by defendant. Shanetta Boles testified that while codefendant Johnson held a gun on the victim, defendant and his cousin went through the victim's pockets, in which the victim had a "couple of dollars." Boles repeatedly testified that she knew money and drugs were taken from the victim but she could not say exactly what or how much was taken. Further, Boles testified that before the robbery the victim had money, and testified that during the assault, she saw money taken from the victim's pockets. Further, the prosecutor introduced testimony from an evidence technician that he did not find any drugs<sup>1</sup> or money at the crime scene. From this evidence a rational trier of fact could reasonably infer that defendant, or codefendants with whom he was acting in concert, permanently deprived the victim of money while the victim was being assaulted by two men with guns. *Lee, supra* at 169; *People v Johnson*, 215 Mich App 658, 671; 547 NW2d 65 (1996).

Defendant argues that Boles testified that defendant and Stacey did not take anything from the victim's pockets. Defendant misreads the part of the record that refers to the victim voluntarily giving the codefendants money for a cab before the robbery, but that thereafter the victim did not "give them anything," apparently referring to the taking of property being against the will of the victim. To the extent that defendant argues inconsistencies in Boles' testimony and challenges her credibility, defendant's argument fails. At a bench trial the trier of fact determines the weight of the evidence and the credibility of the witnesses. *Jackson, supra* at 64-65. The trial court found Boles' testimony that money was taken from the victim to be credible. Thus, there was sufficient evidence at trial for a rational factfinder to conclude that the elements of armed robbery were proved beyond a reasonable doubt. *Lee, supra* at 169; *Johnson, supra* at 671.

Defendant also argues that the evidence was insufficient to sustain a finding of the element of intent to kill necessary for his conviction of assault with intent to murder. We disagree. The elements of assault with intent to commit murder are (1) an assault, (2) made with an actual intent to kill, (3) which, if successful, would make the killing murder. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999); MCL 750.83. These elements may be proved by circumstantial evidence and any reasonable inferences arising therefrom. *Id.* Proof of intent may be satisfied by minimal circumstantial evidence. *Id.*; *People v Bowers*, 136 Mich App 284, 297; 356 NW2d 618 (1984).

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<sup>1</sup> One officer, however, testified he found a packet of drugs on the stairs leading from the apartment.

Boles testified that she saw defendant shoot the victim more than once in the chest or legs. Boles also testified she heard three gunshots and then another gunshot that sounded like codefendant Johnson's gun. Defendant admitted in his statement to police and in his trial testimony that he fired his .22-caliber revolver three or four times at the victim, claiming self-defense. The autopsy report indicated that the victim suffered seven gunshot entrance wounds. Boles also testified that after being shot in the apartment, the victim complained of being numb, and could walk with a limp only with assistance and was bleeding heavily. Police Officer Michael Passage testified he found blood in every room of the house and a trail of blood leading to where the victim lay dead in the street. A rational trier of fact could find from this evidence that defendant shot the victim several times, and could infer from this evidence that defendant intended to kill the victim by shooting him multiple times. This Court has held that shooting a victim or attempting to shoot a victim multiple times is sufficient to raise an inference of intent to kill on the shooter's part. *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996); *Johnson, supra* at 672. We conclude the prosecution presented sufficient evidence for the trial court to find that the elements of assault with intent to commit murder were proved beyond a reasonable doubt. *Wolfe, supra* at 515; *Petrella, supra* at 269-270.

Defendant also argues that the trial court rendered inconsistent verdicts by acquitting Stacey and convicting defendant on the same evidence. We disagree.

Whether a trial court's criminal verdict is inconsistent presents a question of the application of a legal doctrine subject to de novo review, giving due deference to the trial court in determining the weight of the evidence and the credibility of witnesses. *People v Thousand*, 465 Mich 149, 156; 631 NW2d 694 (2001); *Jackson, supra* at 64-65; *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988).

For verdicts to be inconsistent the factual findings underlying the verdicts must be inconsistent. *People v Smith*, 231 Mich App 50, 53; 585 NW2d 755 (1998). See *People v Burgess*, 419 Mich 305, 310-311; 353 NW2d 444 (1984). In the present case, defendant does not point to a specific inconsistent factual finding, but rather to differing verdicts as to codefendants. An acquittal is not a factual finding, but a determination that the evidence was insufficient to convince the factfinder that all of the elements of the offense were proven beyond a reasonable doubt to the satisfaction of the factfinder. An inconsistent verdict among jointly tried codefendants could arise only where there is a necessary factual link between the guilt of two codefendants, and not as in this case, where there is only testimony from one witness that codefendants engaged in similar conduct. See *People v Williams*, 240 Mich App 316, 325; 614 NW2d 647 (2000). See, e.g., *People v Vaughn*, 186 Mich App 376, 381-382; 465 NW2d 365 (1990), and *People v Brown*, 120 Mich App 765, 771-772; 328 NW2d 380 (1982). Here, although the guilt of Stacey for armed robbery was factually dependent on knowingly acting in concert with or aiding and abetting either defendant or codefendant Johnson, the converse was not true.

Moreover, the evidence as to defendant and Stacey was vastly different. Boles testified that after Johnson pulled out his gun and demanded the victim's money, defendant physically stopped the victim from leaving. Further, Boles testified that defendant pulled out a gun and shot the victim at least three times. Defendant acknowledged both in his statement to police and in

his trial testimony that he fired his .22-caliber revolver three or four times. In contrast, Boles testified that Stacey was not armed, did not order anyone to do anything and did not touch the victim to restrain him. Boles' testimony was consistent with Stacey's trial testimony. Moreover, the conduct of defendant and Stacey after the homicide also differed. Stacey McCray turned himself in to the police the next day while defendant had to be extradited from Kentucky. The only evidence that equally inculpated both defendant and Stacey McCray in the armed robbery was the testimony that both went through the pockets of the victim while Johnson held a gun on him. Further, Boles testified that Stacey had money from the victim's pocket in his hand but that she did not see what happened to the money.

The quantum and quality of evidence against defendant was far greater than that which inculpated Stacey. When viewed with the required deference to the factfinder's assessment of credibility and the weight to be given to the evidence, there is nothing factually or logically inconsistent with the trial court's verdict that warrants reversal. *Smith, supra* at 53.

Last, defendant argues that he is entitled to resentencing because the trial court erred in scoring the sentencing guidelines for offense variable three, which addresses "physical injury to a victim". Defendant contends that he was incorrectly assessed 100 points for a killing of the victim instead of ten points for "bodily injury requiring medical treatment." We disagree. We review factual findings of the trial court at sentencing for clear error, MCR 2.613(C); *People v Babcock*, 244 Mich App 64, 74-75; 624 NW2d 479 (2000), while the proper application of statutory sentencing guidelines present a question of law reviewed de novo, *People v Hegwood*, 465 Mich 432, 436; 636 NW2d 127 (2001).

The legislative sentencing guidelines apply to the present case because the instant offenses were committed after January 1, 1999. MCL 769.34(1), (2); *Hegwood, supra* at 438; *Babcock, supra* at 72. A sentence is invalid, and therefore subject to correction, when it is based on inaccurate information. MCR 6.429(A); *People v Miles*, 454 Mich 90, 96-98; 559 NW2d 299 (1997); *People v Harris*, 224 Mich App 597, 599-600; 569 NW2d 525 (1997).

MCL 777.33(1) requires scoring 100 points for offense variable three when a victim is killed. Also, MCL 777.33(2)(a) requires that "in multiple offender cases, if 1 offender is assessed points for death or physical injury, all offenders shall be assessed the same number of points." In this case, because Johnson would be assessed 100 points for sentencing for his second-degree murder conviction, defendant should also be assessed 100 points for the death of the victim. Further, MCL 777.33(2)(b) requires scoring "100 points if death results from the commission of a crime and homicide is not the sentencing offense." Defendant's offense was assault with intent to murder, not a homicide. For these reasons, offense variable three was properly scored 100 points.

Affirmed.

/s/ Janet T. Neff  
/s/ E. Thomas Fitzgerald  
/s/ Michael J. Talbot